IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1062 of 1988

with
CROSS OBJECTIONS NO. 68 of 2002

Date of Decision : 22.9.2005

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THE COMMISSIONER RAJKOT MUNICIPAL CORPORATION - Appellant(s)
Versus
GODAVARIBEN DEVCHANDBHAI KAKKAD & 6 - Defendant(s)
(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?No

Appearance:

MR G.RAMKRISHNAN FOR MR BP TANNA for Appellant
MR RC KAKKAD for Defendant(s) : 1 - 3.
NOTICE SERVED for Defendant(s) : 4,
MS MITA PANCHAL, AGP for Defendant(s) : 5, 7,
MR SB PARIKH for MR RAJNI MEHTA for DefendantNo.6

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal decides First Appeal No.1062 of 1988 - The Commissioner, Rajkot Municipal

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Whether reporters of Local Papers may be allowed to see the Judgment?

Corporation Vs. Godavariben Devchandbhai Kakkad and others, and Cross Objections No.68 of 2002 in First Appeal No.1062 of 1988 filed by the claimants for enhancement of compensation.

2. Shortly stated, Tanker bearing a registration No.GRR - 3500 is owned by Executive Engineer, Water Tanker Division, Gandhinagar, belonging to the State of Gujarat, and insured with the New India Insurance Company Ltd. It was handed over to Rajkot Municipal Corporation on hire. It was registered as private carrier. During this period, it was involved in an accident. The deceased Mukundlal Devchandbhai Kakkad was serving at Rajkot. He was also working as a commission agent receiving salary of Rs.750/- per month. He was knocked down by this vehicle. It is stated that the accident took place due to rash and negligent driving of the tanker by its driver. Compensation of Rs.1,55,000/- is claimed by the mother and sister of the deceased.

Insurance company denies its liability stating inter-alia that the vehicle could not be handed over to Rajkot Municipal Corporation. Other claimants have also denied their liability and also the averments of negligence on the part of driver. Consequently, Claims Tribunal holds that accident took place as a result of rash and negligent driving by its driver. Therefore, the Motor Accident Claims Tribunal, Rajkot District at Rajkot, on 30th March, 1988, awarded compensation of Rs.44,250/- carrying interest at the rate of 9% p.a., from the date of the application till realisation, holding the opponents No.1 and 3 jointly and severally liable for the amount of compensation.

3. Questions for determination in this case is who is liable to pay compensation.

4. Shri G.Ramkrishnan vice Mr.B.P.Tanna submits that the Rajkot Municipal Corporation is not liable to pay the compensation because the

vehicle was owned by the State. It was registered with the State. It was insured by the State. It had no authority to maintain and sublet the vehicle. For all intents and purposes it is State vehicle, therefore, the liability to pay compensation cannot be fastened on the appellant. The State and Insurance Company must suffer the same.

5. In First Appeal No.1104 of 1998 Morbi Taluka Panchayat and Another Vs. Vikramsinh Gambhirsinh and others, similar question has been decided by this Court. Firstly, it has been decided that the State may be owner of the vehicle but at the time of the accident, possession and use of the vehicle is of other party.[See: Andhra Pradesh State Road Transport Corporation v. K.Suseelamma and others - 2005 ACJ 559 and Leelawati and others v. Ravindra Kumar and others - 1998 ACJ 1306]. In this case, the vehicle may be owned by the State but

it had been handed over to the Corporation on hire. Therefore, possession is of the Corporation and the vehicle is under the control of the Corporation and is to be used by it. Therefore, State cannot be made liable to pay the compensation even if it is owner of the same, insured by it with the Insurance Company which is also not liable to pay the compensation since it is a private carrier used thereof by this way is not covered by the policy. [See: Dattu Nathu Kudekar and Another v. National Insurance Company and others - 1991(1) GLR 534]. Consequently contention raised by the appellants cannot be accepted.

6. The next question pertains to compensation. It is contended by learned counsel for the claimants that compensation has not been assessed properly. There is some substance in this contention. Therefore, it is assessed as under:

7. Taking income of Rs.750/- per month applying the principle laid down in Smt.Sarla Dixit and another v. Balwant Yadav and others - AIR 1996 SC 1274 and Ritaben alias Vanitaben and another v. Ahmedabad Municipal Transport Service and another - (2000 ACJ 153), Rs.750 + Rs.750 + Rs.750 = Rs.2250 - ½ = Rs.1125 - 2/3rd = Rs.375 x 12 = Rs.4500 x 20 = Rs.90,000/- + Rs.10,000 (loss of expectancy of life) + Rs.2,000/- (funeral expenses) + Rs.250/- (transport charges), total amount of compensation works out Rs.1,02,250/-.

8. Therefore, total compensation of Rs,1,02,250/- be paid to the claimants with interest at the rate of 12 per cent p.a., on the enhanced compensation from the date of application till payment. Appellant is directed to deposit/pay the compensation to the claimants within three months. Appeal is dismissed and cross objections are allowed to above extent. Cost of this appeal shall be borne by the parties.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

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